

# PAPER B

## NOTIFICATION OF A CALL-IN OF A CABINET MEMBER DELEGATED DECISION UNDER THE PROTOCOL ON THE COUNCIL'S DECISION MAKING PROCESS

We the undersigned wish to apply the Call-In procedure in respect of the following  
Cabinet Member delegated decision

Cabinet member delegated decision dated - 20 April 2012

Delegated decision reference number and title - Appointment of Technical Legal &  
Financial Advisors for Waste Procurement Project

Decision      Option2      Para 24 on Page 4 refers

Called-in because (tick as appropriate):-

- ☐ **Inadequate consultation with stakeholders, partners or the public**
- ☐ **absence of evidence for decision**
- ☐ decision contrary to the council's policy framework
- ☐ decision not in accordance with the approved council budget.

Date on which comments were submitted to the Cabinet Member prior to the  
decision being taken and who by : 19 April 2012 by Cllr V Churchman

Brief statement supporting reason for call-in :-

.There was only one Elected Member briefing which did not provide sufficient detail  
to support decision. Mention was made of a 25 year contract with no supporting  
evidence, either verbal or written.

Desired outcome:

.Require full strategy for the Isle of Wight waste disposal - this to include a possible  
plan to unite both municipal and business waste to provide a total waste strategy for  
the Island. Also to look at possible joint working with others and certainly utilize  
knowledge from those on the North Island.

Names of members with signatures (minimum of three required with two being  
members of the overview and scrutiny committee)

- 1 (Lead Member for the call-in) ...Cllr Vanessa Churchman
- 2 Cllr Jonathan Bacon
- 3 Cllr Ian Stephens
- 4 Cllr Heather Humby

Dated - 26/4/12.

***When all sections have been completed the notification must be passed  
onto the Monitoring Officer.***

**THE CALL IN PERIOD FOR THIS DECISION EXPIRES AT 5.00PM ON FRIDAY 27 APRIL 2012. THE DECISION CANNOT BE IMPLEMENTED UNTIL AFTER THAT DATE.**

RECORD OF DECISION TAKEN UNDER DELEGATED POWERS AT COUNTY HALL, NEWPORT, ISLE OF WIGHT ON FRIDAY, 20 APRIL 2012

Present: Cllr Edward Giles – Cabinet Member for Highways, Transport and Waste

Jonathan Baker – Democratic Services Officer

<b>Item</b>	<a href="#">Appointment of Technical, Legal and Financial Advisors to the Waste Procurement Project</a>
<b>Decision reference</b>	11/12
<b>Notice of Decision Published</b>	Thursday, 12 April 2012
<b>Decision taken</b>	Option 2 - To approve the appointment of technical, legal and financial advisors to facilitate the preparation of an Outline Business Case to inform the longer term waste contract procurement and funding options.
<b>Reason for decision</b>	<p>To set out a full assessment of options, costs, funding mechanisms and risk transfer scenarios with a detailed Outline Business Case (OBC),</p> <p>To ensure that work towards key milestones, including development of the OBC is commenced and therefore limits the risk of further delays to the progress of the project.</p>
<b>Additional reasons</b>	To assist in complying with the strategic priority for the procurement of the future waste contract, as set out in the Council Corporate Plan.
<b>Options considered and rejected</b>	Option 1 - To produce the OBC internally by the project team.
<b>Representations received</b>	Representations were received from Cllr Vanessa Churchman and can be accessed along with the responses given by the Cabinet Member within the <a href="#">APPENDIX</a> to this document
<b>Declarations of interest</b>	None
<b>Additional advice received</b>	None received

**REPRESENTATIONS RECEIVED FROM COUNCILLOR VANESSA CHURCHMAN**  
**THURSDAY 19 APRIL 2012**

I am writing to voice my concerns regarding the Delegated Decision to be taken on 20 April regarding the procurement of Technical, Legal and Financial Advisors.

At the Scrutiny Panel on 28 March, the Quarter 3 performance reports (submitted to Cabinet on 14 Feb) included information on the corporate priority of waste strategy. This indicated that the final draft municipal waste strategy was completed in Nov 2011 and the draft strategy would be submitted to Cabinet in Feb/Mar 2012.

With regard to the delegated decision however I wish to raise the following:

1. Para 3 shows the expected maximum spends in 2012/13. What expenditure will there be on this support for 2013/14?

**Response from Cabinet Member**

The Delegated Decision Report, in paragraphs 12 and 28 emphasises the requirement to complete the Outline Business Case (OBC) for the approval of Cabinet during summer 2012. Completion of the OBC will enable the Council to decide on the appropriate procurement process for the collection and disposal elements and thereby to increase certainty over future spend requirements. Therefore whilst an exact figure cannot be given it is correct to state that there will be further costs beyond 2012/13, not just for 2013/14, but all the way through to the commencement of the new waste contract in October 2015.

2. Para 4 - What plans are in place if the existing treatment facilities do not remain fully in service until Oct 2015 and what costs will be incurred?

**Response from Cabinet Member**

This does not relate directly to the procurement of the new waste contract and was explored in some detail when the Council made the decision to change collection and disposal arrangements under the existing contract. In doing so it was explicitly stated that one of the benefits would be to reduce reliance on the gasification plant which has in the past proven to be unreliable. Island Waste Services (BIFFA) are responsible for ensuring that they meet the existing contractual targets. There are a number of options being explored in the event of the gasification plant failing which include food waste being sent to an anaerobic digester on the mainland and opportunities for utilising any spare capacity that mainland authorities may have in their energy from waste facilities, eg incineration. The Isle of Wight Council does not hold a contract with Energos, the company that owns and operates the gasification plant, they are a sub-contractor of BIFFA.

3. Para 5 indicates there are 44 months to complete the procurement process and build new infrastructure. It also states that the procurement process will take 36 months, with a further 30 months for any 'build', giving a total of 66 months. What happens with the 22 months difference? Will this require an extension of the existing contract?

#### Response from Cabinet Member

We will be working throughout the procurement phase to reduce the gap as far as possible. If the new disposal facilities are not available for the commencement of the new contract in October 2015 we will need to have an interim solution in place. We would not expect this to be via an extension to the current contract. The OBC will outline some of the possible options for addressing this which again may include the use of mainland facilities. All of this will be subject to negotiation, if necessary, over the coming years.

4. Why has there been a delay in commencing procurement when it has been known for a long time that the existing contract expires in Oct 2015 and will this delay incur additional costs?

#### Response from Cabinet Member

The procurement process commenced approximately eighteen months ago and work has been ongoing to develop a waste strategy which is critical to informing the procurement and then collection and disposal options available to the Council. It became clear that there was insufficient capacity and skill within the existing structure to deliver a new contract and at that time the procurement of the contract was moved to the Highways PFI team to ensure that the skills and knowledge being developed there were utilised for the procurement of the waste contract. This coincided with the Council facing significant budget pressure and reductions in post and were therefore not in a position to allocate significant additional resource to procuring the waste contract. The action taken to manage our budgets last financial year and this, mean that we now have the flexibility to invest in procuring the new waste contract.

In the event that the new disposal facilities are not in place by October 2015, we will of course have to pay for an interim service (see response to question three above). This will be subject to negotiation and we cannot now determine the nature of the interim service that may be required at this stage and could not therefore predict whether the costs would be higher, or indeed lower, than the current cost of service provision.

5. Para 7 states that the current infrastructure is not fit for purpose. When the initial contract was signed it was held up as an example of good practice. What safeguards will be put in place to ensure that the new contract can be regularly reviewed and updated to keep up with technology together with financial and legal changes.

#### Response from Cabinet Member

One of the advantages of engaging expert Legal, Technical and Financial advisors is that we can use leading experts with current experience in the waste field to assist us in writing an output specification and project agreement that set appropriate performance objectives, whilst maintaining flexibility to ensure advancements in line with changes in technology and legislation are incorporated throughout the contract term. This is something that is lacking from the existing contract and that will be written into the new contract. We will take a similar approach to that which we have with the PFI contract which not only to protect

the Council's position in the event of changes in legislation / technology, but also to ensure that we benefit from any advantages that this may give us or the contractor/s.

6. Para 9 indicates that the waste strategy is complete so why have all Elected Members not seen it - it was not presented at the Members Forum. The quarter 3 performance report had a table indicating that the Cabinet would be considering the draft strategy in Feb/Mar 2012. It also stated that this "important strategic document would be presented to all Members of O & S in Feb 2012", prior to being submitted to Cabinet but this did not happen - why?

#### Response from Cabinet Member

The draft strategy is complete and was reviewed in some detail in the Members Information Seminar on 20 February 2012. In addition it was specifically stated that the strategy was available to all members via member support / democratic services (Jo Moore / Liz Dutton). Our intention is to place the draft strategy on the intranet shortly. The strategy is in draft and the intention is that it will be formally accepted by the Cabinet as part of the procurement process. Prior to formalising the strategy there will need to be an Island-wide consultation on its contents.

7. The Forward Plan for Apr-Jul 2012 stated that the OBC for the waste contract would go to Cabinet on 22 May. The latest Forward Plan for May-Aug indicates it will now go to Cabinet in Sep 2012. It talks about more dialogue but with whom and what are the implications of delaying this decision?

#### Response from Cabinet Member

The OBC has been delayed until September 2012 as input is required from our external advisors. We will only be in a position to appoint the advisors on approval of the Delegated Decision Report. Delaying the decision to appoint advisors will delay the preparation and presentation of the OBC and this could ultimately impact on the overall procurement timescales and add to the identified difference time shortfall referred to in questions three and four above.

8. Para 10 makes reference to 3 advisors - who are they?

#### Response from Cabinet Member

We have not appointed the three advisors yet and are unable to do so until the Delegated Decision paper is approved. However, paragraphs 18 to 22 explain in some detail how the three advisors will be selected and appointed. As the delegated decision report makes clear, we will need to appoint technical, legal and financial advisors.

9. Para 14 refers to the Members information seminar. I would like the information given at this meeting to be made public.

## Response from Cabinet Member

Making the full presentation available would neither be appropriate nor viable given that there is context to the contents of the presentation as was given to all members who attended the seminar. Member presentation seminars are exactly that, ie they are intended to provide members with detailed views of the emerging thinking and options that are being considered. To simply make the contents of the presentation public would undermine the role of elected members. As stated above, a full Island-wide consultation will be undertaken on the draft waste strategy prior to it being formally adopted by the Council.

It is also the case that the key points covered in the member presentation seminar in terms of cost, options for procurement and the intended benefits of a new waste collection and disposal contract are in the public domain as they have been covered at budget setting meetings, scrutiny panel meetings and full council meetings. These have been followed up by the Island's media.

10. The delegated decision report should contain the implications of further delays to the project as outlined at the above mentioned meeting; why have they not been put in the risk management section?

## Response from Cabinet Member

The implication of further delays is dealt with in response to questions three, four and seven above. As this is pure speculation at the moment it was not appropriate to go into any detail in the risk management section of the report.

11. What staffing levels do we possess for waste management internally and why is it now considered that the Project Team members do not have the necessary skills as I was under the impression that the Council had competent Officers, who are chartered engineers, with vast experience of Waste?

## Response from Cabinet Member

The requirement for external advisors is not a sudden realisation; it is standard practice to engage specific expert advice in highly specialised fields. If we were to permanently employ such experts, it would be extremely costly compared to engaging a leading consultancy company who can provide such expert advice only when we require it. The waste management team is and always has been a very small team. The existing team would not have had the capacity to undertake a procurement exercise of the scale and complexity of this one whilst continuing to manage the current contract.

We have moved two posts from the existing waste management team across to sit alongside the PFI team to create a dedicated procurement team. To suggest that all of the skills required to deliver a new waste collection and disposal contract can be provided by chartered engineers demonstrates a failure to understand the skills required to procure a major contract of this nature.

None of this detracts from the skills and expertise of the procurement and waste experts that we employ permanently and who will be managing the procurement process, the input of the expert advisors and ultimately the new contract itself.

# Delegated decision report

## DECISION UNDER DELEGATED POWERS

**DECISION CANNOT BE TAKEN BEFORE FRIDAY 20 APRIL 2012**

Title	<b>APPOINTMENT OF TECHNICAL, LEGAL AND FINANCIAL ADVISORS TO THE WASTE PROCUREMENT PROJECT</b>
Report for the	<b>CABINET MEMBER FOR HIGHWAYS, TRANSPORT AND WASTE</b>

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### EXECUTIVE SUMMARY

1. This paper seeks approval to procure and appoint technical, financial and legal advisors in order to support the preparation of the waste contract procurement and funding options.
2. It also seeks to ensure that the new waste collection and disposal contract/s will be successfully implemented without a break in service in October 2015 and that the contract delivers the best possible outcome in terms of the value for money and the effective collection and disposal of waste.

### BACKGROUND

3. This report seeks the approval to commence the procurement and appointment of technical, financial and legal advisors to support the procurement process. The expected maximum spends during 2012/13 for these advisors are: Legal £120k, Financial £190k and Technical £190k. The appointment of suitable advisors will be undertaken in accordance with paragraphs 19 – 22 of this paper and therefore the advisors will not be available at the commencement of the current financial year; spend figures are therefore not based on a full year's expenditure.
4. The current contract for Waste Collection and Treatment services expires in October 2015. The existing treatment facilities are at the end of their service life and may not remain fully in service until that time. The current landfill is also likely to reach its capacity within the near future leading to the need for a new landfill site.
5. The new contract must therefore be in place and be operational by October 2015. From the end of February 2012, there are 44 months available to both complete the procurement process and to build any new infrastructure needed to operate a new contract. However, the procurement process is likely to take 36 months and a further 30 months will be needed to build the infrastructure.

6. The procurement of a new waste collection and treatment contract may require significant investment in treatment facilities and the construction of a new landfill site. The procurement process needs to follow EU procurement regulations and is assessed to be a “complex procurement” requiring the use of the competitive dialogue route. The following are the key stages in that process: Pre-Qualification (PQQ), Invitation to Submit Outline Solutions (ISOS), Invitation to Submit Detailed Solutions (ISDS), Invitation to Submit Refined Solutions (ISRS), Call for Final Tender (CFT) and Preferred Bidder (PB) selection. The ISOS, ISDS and ISRS phases involve detailed dialogue sessions with bidders including evaluation of proposals at the end of each stage.
7. The current waste infrastructure on the Island is not fit for purpose for a future waste contract and the council will need to consider making substantial capital investment to manage waste services in the future. There will be alternative mechanisms for funding such provisions and some of those options will be influenced by the appetite of both the council and the market to take investment risks and to consider various borrowing options. The technical, legal and financial options for implementing a new waste contract should therefore be fully understood by the council before we embark on the new procurement. To this end, it is planned that a comprehensive “Outline Business Case” setting out the options, costs, funding mechanisms, risk transfer options and procurement costs will be produced for the approval of the Cabinet. The current Waste Project Team requires external “waste specialists” to support the technical, financial and legal aspects of the business case. This stage, up to the production of the Outline Business Case (OBC) approval, is identified as Phase 1.
8. If the OBC is approved and the council allocates adequate funding for the procurement stage, then the same external advisors (subject to appropriate performance) will be used to support the procurement phase (Phase 2).
9. The draft waste strategy is complete and the appointment of external advisors to support the OBC and procurement phases is now an urgent requirement in order that the procurement of the contract can be progressed.
10. The initial task of the three advisors once appointed would be to support Phase 1 – i.e. the development of the Outline Business Case over a three to four month period. The decision to progress to procure a new waste contract, phase 2, will be made by the Cabinet once the Outline Business Case is presented. The three external advisors will be engaged using framework type contracts allowing services to be provided under call-off arrangements. Advisor appointments for Phase 1 will be structured such that they remain valid for Phase 2, if and when the council decides to proceed to waste contract procurement.

## STRATEGIC CONTEXT

11. The procurement of the future waste contract is a strategic priority for the council, as set out in the Council Corporate Plan. The approval to proceed to appointing the advisors will ensure that work towards key milestones, including development of the Outline Business Case may be commenced and therefore the risks of further delays to the progress of this project are limited.
12. An early priority after the appointment of external advisors will be to set out a full assessment of options, costs, funding mechanisms and risk transfer scenarios with



a detailed Outline Business case (OBC), to be produced for the approval of Cabinet, in the summer of 2012, prior to the advancement beyond OBC stage.

### CONSULTATION

13. There has been internal officer and member consultation and the budget agreement of the Full Council.
14. On 20 February 2012, a members information seminar was held in order to advise councillors of the key issues facing the waste project, including the requirement for the appointment of technical, legal and financial advisors. Implications of further delays to the project were also outlined.

### FINANCIAL / BUDGET IMPLICATIONS

15. Phase 1 - Budget required for the production of the Outline Business Case of an estimated £100k is already available from the savings made from the waste strategy funding. This has been achieved by efficient management of the consultancy contract, while increased internal capacity and expertise has meant that some of the work is being completed within the council.
16. Phase 2 – the longer term budget requirement for managing the procurement of a new waste contract will be finalised when the Outline Business Case is completed.

### CARBON EMISSIONS

17. For review meetings and on other occasions, the project team will endeavour to make maximum use of conference calls with the financial, legal and technical advisors, in order to reduce the requirements to travel. A more effective waste collection regime maximising recycling and reducing landfill will ultimately also contribute towards a reduced carbon footprint.

### LEGAL IMPLICATIONS

18. Each of the three external advisors will be engaged on framework agreements that will be in the form of call-off arrangements. This will provide the council with the flexibility to call upon the advisors for individual tranches of work as and when required by the council. The framework agreements will not guarantee any particular level of work to the advisors and in the event that the council requirements should change during the project, spend with any or all of the advisors can be amended, or ceased.
19. A specific option within the framework agreement placed for the legal support for the Highways PFI project enables the legal services for the waste project to be awarded to the same provider if considered appropriate. This framework agreement was placed after competition via a Government Procurement Service (GPS) framework agreement.
20. The contract for technical services put in place via a full EU tender process for the development of the waste strategy contains a specific option to enable the technical services for the Outline Business Case stage to be awarded to that provider.

21. The finance services will be secured through a competitive tender process using an appropriate GPS framework agreement.
22. All of the above will be subject to approval through the council's internal processes. These arrangements will be compliant with both the council's own contract requirements and EU requirements.

### OPTIONS

23. Option 1 is to produce the OBC internally by the project team. This option has been considered and discounted as the Project Team members do not have the necessary skills.
24. Option 2 is to approve the appointment of technical, legal and financial advisors to facilitate the preparation of an Outline Business Case to inform the longer term waste contract procurement and funding options.

### RISK MANAGEMENT

25. The council has identified the delivery of the waste contract as a strategic priority, but with no ongoing budget provision. The approval process for the appointment of advisors is already reducing the time available to implement the new waste contract. The risk of delay to the procurement of the waste contract is significant both in financial and reputational terms
26. A risk management strategy has been developed for the project designed to manage those risks which could impact the project. This will help inform the risk consideration during the Authority's procurement process. Risk workshops are being held regularly, to monitor and update risks and mitigation actions as required.

### EVALUATION

27. The appointment of the Advisors will be on the basis of quality and price.

### RECOMMENDATION

28. It is recommended that approval should be given to progress with Option 2 (above) and therefore approves the appointment of technical, legal and financial Advisors to facilitate the preparation of an Outline Business Case to inform the longer term waste contract procurement and funding. The completion of the OBC however will enable the Authority to increase its certainty over actual spend moving forward.

### APPENDICES ATTACHED

29. None

## BACKGROUND PAPERS

30. Full Council Budget report – 29 February 2012.

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STUART LOVE  
Strategic Director  
Economy & Environment  
Decision

Signed

Date

COUNCILLOR EDWARD GILES  
Cabinet Member for Highways, Transport and  
Waste

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